

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 29 March 2004

BALCA Case No.: 2003-INA-10
ETA Case No.: P2001-NY-02476505

In the Matter of:

BRNO ELECTRICAL CONTRACTING CORP.,
Employer,

on behalf of

WLADSYSLAW KOT,
Alien.

Appearance: Janusz W. Andrzejewski, Esquire
New York, New York
For Employer and the Alien

Certifying Officer: Dolores DeHaan
New York, New York

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This case arises from an application for labor certification on behalf of Wladsyslaw Kot (“the Alien”) filed by Brno Electrical Contracting Corp. (“Employer”) pursuant to § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (“the Act”), and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer (“CO”) denied the application and Employer requested review pursuant to 20 C.F.R. § 656.26. The following decision is based on the record upon which the CO denied certification and Employer’s request for review, as contained in the Appeal File (“AF”), and any written arguments of the parties. 20 C.F.R. § 656.27(c).

STATEMENT OF THE CASE

On January 14, 1998, Employer, Brno Electrical Corp., filed an application for labor certification on behalf of the Alien, Wladsyslaw Kot, for the position of “Electrician Supervisor.” The job duties for the position involved supervising a crew installing and dismantling electrical systems and equipment, planning installations and observing the functioning of installed equipment. The only stated requirement was two years of experience in the job offered. (AF 15).

In a Notice of Findings (“NOF”) issued on June 4, 2002, the CO proposed to deny certification on the grounds that Employer had rejected two qualified U.S. applicants for other than lawful job-related reasons and failed to show that the job opportunity was clearly open to qualified U.S. workers. *See* 20 C.F.R. §§ 656.21(b)(6), 656.20(c)(8). (AF 39-41). Employer submitted its rebuttal on July 9, 2002. (AF 42-44). The CO found the rebuttal unpersuasive and issued a Final Determination (“FD”) dated July 22, 2002, denying certification on the same basis. (AF 45-46). On August 22, 2002, Employer appealed the FD. (AF 54-56). The matter was docketed in this Office on October 16, 2002 and Employer filed a Brief on February 3, 2003.

DISCUSSION

An employer must show that U.S. applicants were rejected solely for lawful job-related reasons. 20 C.F.R. § 656.21(b)(6). Furthermore, the job opportunity must have been open to any qualified U.S. worker. 20 C.F.R. § 656.20(c)(8). Therefore, an employer must take steps to ensure that it has rejected U.S. applicants only for lawful, job-related reasons and not stopped short of fully investigating an applicant’s qualifications.

Although the regulations do not explicitly state a “good faith” requirement in regard to post-filing recruitment, such a good faith requirement is implicit. *H.C.*

LaMarche Ent., Inc., 1987-INA-607 (Oct. 27, 1988); *Tilden Car Care Center*, 1995-INA-88 (Jan. 27, 1997). Actions by the employer which indicate a lack of good faith recruitment effort, or actions which prevent qualified U.S. workers from further pursuing their applications, are thus a basis for denying certification. In such circumstances, the employer has not proven that there are not sufficient United States workers who are “able, willing, qualified and available” to perform the work. 20 C.F.R. § 656.1.

In a report of recruitment results, dated October 31, 2001, Employer’s Vice President, Marian Surowka, stated that Applicant #1 did not meet the requirements because although his resume indicated experience in the field, he did not possess experience performing certain duties. Applicant #2 was determined not to be qualified for the same reasons. Consequently, neither applicant was invited to interview. (AF 29).

In the NOF, the CO stated that Applicants #1 and #2 were rejected without interview because their resumes did not reflect experience in certain aspects of the position. However, the CO determined that based on their resumes, the applicants possessed qualifications that warranted further investigation by Employer. The CO found that the applicants should have been contacted for an interview. (AF 40).

Employer’s rebuttal consisted of a letter by Employer’s Vice President, Marian Surowka, dated July 8, 2002. (AF 42-43). In summary, Employer stated that Applicant #1 was not interviewed because his resume did not establish the following experience: dismantling conduits of supply of electrical systems and equipment, preparing sketches of location of wire and equipment, and planning new or modified installations. Furthermore, Employer noted that Applicant #1’s experience for the past sixteen years was primarily supervisory and did not entail performing electrical duties. Similarly, Employer stated that Applicant #2 was not interviewed because his resume failed to establish the following experience: planning layouts, planning new or modified installations, and dismantling electrical conduits, systems and equipment. Moreover, Employer added that Applicant #2 seemed to qualify for a job with a bigger company where there is a higher level of compartmentalization of the duties, rather than a small

company, which required the supervisor electrician to perform a broader scope of duties. (AF 42-43).

In the FD, the CO rejected Employer's rebuttal, stating that both of these applicants' resumes presented qualifications which merited further consideration by Employer because the resumes showed that these applicants had a range of experience, education and training which raised a reasonable possibility that they were qualified. (AF 52).

Where a U.S. applicant's resume indicates a reasonable possibility that he/she meets the stated job requirement, an employer is obligated to further investigate such applicant's credentials by interview or otherwise. Accordingly, an employer may not summarily reject a seemingly qualified U.S. applicant based on the resume alone. *Gorchev v. Gorchev Graphic Design*, 1989-INA-118 (Nov. 29, 1990)(*en banc*); *Hambrecht Terrel International*, 1990-INA-358 (Dec. 11, 1991); *Dearborn Public Schools*, 1991-INA-222 (Dec. 7, 1993)(*en banc*); *Pico Investment Company*, 1994-INA-249 (Oct. 4, 1995); *A.A. Curbing, Inc.*, 1995-INA-427 (July 16, 1997).

In the present case, Applicant #1's resume revealed that he was employed as an electrician for five years, as an electrician foreman-supervisor for five years, and that he has been the President of his own electrical company since 1985 and was involved in supervising various electrical-related matters. (AF 30). Applicant #2's resume stated that he was employed as an electrician/pipe fitter for three years, as an electrician for a year and a half, as an electrician supervisor for two years, as an electrical installation supervisor for one year, and as an electrician/foreman since 2000. (AF 29). Because these applicants had such extensive backgrounds in electrical work, generally, and, as electrician supervisors, specifically, Employer should have at least interviewed these U.S. applicants to further investigate whether they were qualified to perform the duties of the job offered.

In view of the foregoing, we find that labor certification was properly denied.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of
Alien Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002**

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within ten days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.